



U.S. Department of Agriculture
Forest Service
333 SW 1st Avenue, P.O. Box 3623
Portland, OR 97208



U.S. Department of the Interior
Bureau of Land Management
333 SW 1st Avenue, P.O. Box 2965
Portland, OR 97208

March 2004

RECORD OF DECISION

Amending Resource Management Plans for Seven Bureau of Land Management Districts and Land and Resource Management Plans for Nineteen National Forests Within the Range of the Northern Spotted Owl

Decision to Clarify Provisions Relating to the Aquatic Conservation Strategy



Western Oregon, Western Washington, and Northwestern California

NOTICE

Readers should note that the Under Secretary of Agriculture for Natural Resources and the Environment and the Assistant Secretary of the Interior for Land and Minerals Management are the responsible officials for this proposed action, exercising the authority delegated to them by their respective Secretaries. Therefore, no administrative review ("appeal") through the Forest Service will be available on the Record of Decision under 36 CFR 217, and no administrative review ("protest") through the Bureau of Land Management will be available on the Record of Decision under 43 CFR 1610.5-2.

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RECORD OF DECISION

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Decision to Clarify Provisions Relating to the Aquatic Conservation Strategy

Decision Summary

We, the Under Secretary of Agriculture for Natural Resources and the Environment and the Assistant Secretary of the Interior for Land and Minerals Management, are amending the 1994 Northwest Forest Plan¹ to clarify provisions relating to the Aquatic Conservation Strategy (ACS). This decision amends Resource Management Plans (RMPs) for seven Bureau of Land Management (BLM) Districts.² This decision also amends Land and Resource Management Plans (LRMPs) for 19 National Forests.³ The clarifying changes adopted in this Record of Decision combine elements from the Proposed Action and Alternative A in the Final Supplemental Environmental Impact Statement (FSEIS), with additional explanation and revision. We find that the changes we are adopting will have environmental effects within the range predicted for the action alternatives in the FSEIS.

The ACS is an integral part of the Northwest Forest Plan. The ACS is intended to maintain and restore the ecological health of watersheds and aquatic ecosystems within the Northwest Forest Plan area. The April 13, 1994 Record of Decision (1994 ROD) identifies the nine objectives of the ACS. Page B-10 of the 1994 ROD includes language that has been incorrectly interpreted. This language has been interpreted to mean that decision makers must evaluate proposed site-specific projects for consistency with all of the ACS objectives, and that a project cannot be approved if it has adverse short-term effects, even if the ACS objectives can be met at the fifth-field or larger scale over the long term. However, the ACS objectives were never intended to be applied or achieved at the site-specific (project) scale or in the short-term; rather, they were intended to be applied and achieved at the fifth-field watershed and larger scales, and over a period of decades or longer rather than in the short-term. Indeed, failing to implement projects due to short-term adverse effects may frustrate the achievement of the goals of the ACS.

The decision clarifies the proper spatial and temporal scale for evaluating progress toward attainment of ACS objectives and clarifies that no project-level finding of consistency with the ACS objectives is required.

The decision is consistent with existing guidance from the Northwest Forest Plan. The decision specifically reinforces the principle that projects must be considered in

¹ The Northwest Forest Plan is formally known as the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents within the Range of the Northern Spotted Owl (April 13, 1994). The Northwest Forest Plan amended agency resource management plans throughout the range of the Northern Spotted Owl.

² The decision also influences management of the Coquille Forest.

³ This is a non-significant amendment under the National Forest Management Act.

a long-term, fifth-field watershed or larger scale to determine the context for project planning and National Environmental Policy Act (NEPA) effects analysis.

This decision will increase the ability of the Forest Service and BLM to successfully plan and implement projects that follow Northwest Forest Plan principles and achieve all of the goals of the Northwest Forest Plan, while retaining the original intent of the ACS. This language more specifically and clearly represents the intent of the Northwest Forest Plan by clarifying that fifth-field watershed and larger scales, and long-term time frames, are appropriate for evaluating progress toward attainment of ACS objectives.

This decision does not authorize any specific actions. This decision amends existing agency resource management plans in order to clarify project requirements with regard to the ACS. Project requirements related to Watershed Analysis, Endangered Species Act consultation, and NEPA will not change as a result of this decision. This decision does not assign or otherwise estimate Probable Sale Quantity (PSQ) for individual administrative units or for the Northwest Forest Plan as a whole.

Background

In the 1994 ROD, the Secretaries of Agriculture and the Interior adopted the Northwest Forest Plan. The Secretaries acknowledged that decision “is the culmination of an unprecedented effort in public land management.” The Plan was intended to be a “balanced, comprehensive and long-term policy for the management of over 24 million acres of public land.” The Plan represented a new way of thinking about managing forest ecosystems, using active management to achieve its two primary goals of meeting “the need for forest habitat and the need for forest products.” 1994 ROD, page 25. The Plan sought to provide “a healthy forest ecosystem with habitat that will support populations of native species and includes protection for riparian areas and waters,” along with “a sustainable supply of timber and other forest products that will maintain the stability of local and regional economies, and contribute valuable resources to the national economy, on a predictable and long-term basis.” 1994 ROD, page 26. We remain fully committed to these goals today.

In the span of almost 10 years since the 1994 ROD was signed, the agencies have attempted to implement the Northwest Forest Plan based upon the standards and guidelines in the 1994 ROD. However, ambiguities in the 1994 ROD, and resulting misinterpretations of its provisions, have substantially interfered with the agencies’ ability to implement the Northwest Forest Plan as intended. As a result, neither the ecological nor economic goals of the Northwest Forest Plan have been met. The U.S. District Court for the Western District of Washington has interpreted the ACS provisions of the Northwest Forest Plan to mean that “not only must the ACS objectives be met at the watershed scale ... each *project* must also be consistent with ACS objectives, i.e. it must maintain the existing condition or move it within the range of natural variability.” Pacific Coast Federation of Fishermen’s Association (PCFFA) v. National Marine Fisheries Service (NMFS), 71 F. Supp. 2d 1063, 1069 (W.D. Wash. 1999).⁴ (emphasis in original)

⁴ This case will be referred to as PCFFA v. NMFS. This part of the ruling was affirmed in 265 F. 3d 1028 (9th Cir. 2001). NMFS is now known as National Oceanic and Atmospheric Administration (NOAA) Fisheries.

Since 1998 dozens of projects designed to achieve the Northwest Forest Plan's ecological and economic goals have been delayed or stopped due to these and other incorrect interpretations of the 1994 ROD. These interpretations have required land managers to demonstrate that every project under the Northwest Forest Plan will maintain existing conditions (or lead to improved conditions) at every spatial and temporal scale. Any project that may result in site-level degradation to aquatic or riparian habitat, no matter how localized or short term, could be precluded under these interpretations. These interpretations have prevented managers from proceeding with many ecologically sound projects that will aid in attaining ACS objectives over the long term.

In the PCFFA v. NMFS litigation, the District Court ruled that the NMFS programmatic biological opinion on the Northwest Forest Plan was in compliance with the Endangered Species Act. As NMFS had chosen to use ACS consistency as an analytical surrogate for jeopardy analysis in its project-level biological opinions,⁵ the District Court ruled that NMFS had an independent obligation to ensure ACS consistency. The court invalidated several NMFS project-level biological opinions on timber management projects that would have contributed toward achieving a variety of Northwest Forest Plan goals. The timber sales covered by the invalidated biological opinions minimized construction of roads, and included associated projects such as decommissioning roads and upgrading culverts to decrease sedimentation and allow fish passage for increased utilization of suitable habitat. As a result of the design features and mitigation measures, the timber sale projects would have resulted in minimal adverse impacts or beneficial impacts on anadromous fish habitat.

The District Court, in the PCFFA case, interpreted the 1994 ROD to require project-level ACS consistency determinations, and rejected the project-level biological opinions because, in the Court's opinion, they did not adequately demonstrate that each individual project was consistent with ACS objectives. The District Court also interpreted the ACS provisions of the Northwest Forest Plan to require that for the project-level consistency determinations, "to fully ensure the action agencies' compliance with the ACS, NMFS would have to assess the conditions immediately after the sale" as well as over the longer term. The Ninth Circuit Court of Appeals upheld the District Court's interpretations of the 1994 ROD on these issues.

While the District Court invalidated the project-level biological opinions, effectively blocking the timber sale projects, the Court allowed some watershed restoration projects covered by those same biological opinions to proceed. This outcome led to further confusion about application of the ACS at the site scale.

As described in the 2004 biological opinions for this decision, NOAA Fisheries (formerly NMFS) and the U.S. Fish and Wildlife Service will no longer rely upon consistency with ACS objectives in order to make Endangered Species Act section 7 jeopardy determinations on land management projects proposed in the Northwest Forest Plan area. However, it is still necessary to clarify the underlying ambiguities in the 1994 ROD that led to the misinterpretations of the ACS provisions by the courts and others over the past few years. This decision clarifies those ambiguities.

⁵ Jeopardy analysis refers to a determination as to whether or not projects or programs are likely to jeopardize the continued existence of a species listed as threatened or endangered, or proposed for listing under the Endangered Species Act. Jeopardy analysis was at issue in PCFFA v. NMFS.

Purpose and Need

This decision responds to the agencies' underlying need for increased ability to successfully plan and implement projects under the Northwest Forest Plan. The current language of the 1994 ROD has hindered the agencies' ability to follow Northwest Forest Plan principles and achieve its goals. The goals of the Northwest Forest Plan cannot be achieved without project implementation. The action alternatives were designed to clarify that:

- The proper scales for federal land managers to evaluate progress toward achievement of the ACS objectives are the fifth-field watershed and larger scales.
- ACS objectives should not be expected to be achieved at the project scale. Project records must contain evidence that the project complies with relevant standards and guidelines in Sections C and D of Attachment A of the 1994 ROD. Project records must also demonstrate how the decision maker used relevant information from applicable watershed analysis to provide context for project planning.
- References to ACS objectives in the standards and guidelines in Sections C and D of Attachment A of the 1994 ROD do not require that decision makers find that an individual project, by itself, will fully attain ACS objectives.

Alternatives Considered

Three alternatives - No Action, the Proposed Action, and Alternative A – were considered in detail in the FSEIS. The Forest Service and BLM received many comments on the Draft SEIS. Alternative A was developed and analyzed in the FSEIS in response to comments received. See the FSEIS Chapter 2 for a more complete description of the alternatives and FSEIS Appendix C for a more complete description of public comments and responses.

No Action

Under the No Action alternative, the current wording of the ACS would be retained. Land managers would continue to plan projects to meet the goals and objectives of the Northwest Forest Plan, but would encounter difficulty demonstrating that projects resulting in short-term disturbance to aquatic or riparian habitat "maintain the existing condition." A "finding of consistency with ACS objectives" would continue to be misinterpreted as being required for every project.

Proposed Action

The Proposed Action would change specific language within Attachment A of the 1994 ROD. Land managers would be required to demonstrate that projects comply with applicable standards and guidelines in Sections C and D of Attachment A of the 1994 ROD. Land managers would also be required to document how applicable watershed analysis was used to provide context for project planning. No additional site-scale determinations regarding attainment of ACS objectives would be required.

The Proposed Action would not change the goals or objectives of the 1994 ROD. All components of the ACS (Riparian Reserves, Key Watersheds, watershed analysis, and watershed restoration) would remain in place. The Proposed Action would clarify that information in watershed analysis will be used in planning and decision-

making, but that watershed analysis is not a decision-making process in and of itself.

The Proposed Action would delete certain references to the term “standards and guidelines” in order to clarify that Sections C and D of Attachment A of the 1994 ROD are the project-level standards and guidelines.

Alternative A

Alternative A was developed in response to comments received on the Draft SEIS. Alternative A was identified as the Preferred Alternative in the FSEIS. Alternative A would retain some paragraphs from the 1994 ROD that would be deleted by the Proposed Action, and would add some explanatory paragraphs to the Proposed Action. These modifications were intended to resolve public concerns about specific wording in the Proposed Action. Public concern was expressed that under the Proposed Action a given project would not be required to “maintain the existing condition or improve the watershed condition.” Alternative A would retain the concept that under the ACS, agencies must “maintain existing conditions or implement actions to restore conditions at the fifth-field watershed scale, over the long term.”

The Decision

It is our decision to change the wording of certain provisions in the 1994 ROD. The wording changes we are adopting are a combination of the Proposed Action, Alternative A, and some new language that better explains and clarifies the intent in 1994 and in this decision. We are removing certain passages in the 1994 ROD and replacing other passages. The tables set forth below present, in the left column, passages from the 1994 ROD that are affected by this decision, and in the right column, the amendment or disposition of the passage in this decision:

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Northwest Forest Plan 1994 Record of Decision, Attachment A, Page i	
No Action (Existing)	The Decision
All sections of this document, considered together, are the complete compilation of standards and guidelines. However, these standards and guidelines are broken down into the following sections for clarity and ease of reference.	Deleted in entirety.

Northwest Forest Plan 1994 Record of Decision, Attachment A, Page A-6	
No Action (Existing)	The Decision
Although the direction in all sections of this document constitutes standards and guidelines, standards and guidelines specific to particular land allocation categories, or relative to specific types of management activities, are included in Section C of these standards and guidelines.	The standards and guidelines for specific land allocation categories and specific types of management activities are set forth in Sections C and D of these standards and guidelines.

Northwest Forest Plan 1994 Record of Decision, Attachment A, Pages B-9 to B-10	
No Action (Existing)	The Decision
The important phrases in these standards and guidelines are "meet Aquatic Conservation Strategy objectives," "does not retard or prevent attainment of Aquatic Conservation Strategy objectives," and "attain Aquatic Conservation Strategy objectives." These phrases, coupled with the phrase "maintain and restore" within each of the Aquatic Conservation Strategy objectives, define the context for agency review and implementation of management activities. Complying with the Aquatic Conservation Strategy objectives means that an agency must manage the riparian-dependent resources to maintain the existing condition or implement actions to restore conditions. The baseline from which to assess maintaining or restoring the condition is developed through a watershed analysis. Improvement relates to restoring biological and physical processes within their ranges of natural variability.	Deleted in entirety.

Northwest Forest Plan 1994 Record of Decision, Attachment A, Page B-10	
No Action (Existing)	The Decision
<p>The standards and guidelines are designed to focus the review of proposed and certain existing projects to determine compatibility with the Aquatic Conservation Strategy objectives. The standards and guidelines focus on “meeting” and “not preventing attainment” of Aquatic Conservation Strategy objectives. The intent is to ensure that a decision maker must find that the proposed management activity is consistent with the Aquatic Conservation Strategy objectives. The decision maker will use the results of watershed analysis to support the finding. In order to make the finding that a project or management action “meets” or “does not prevent attainment of” the Aquatic Conservation Strategy objectives, the analysis must include a description of the existing condition, a description of the range of natural variability of the important physical and biological components of a given watershed, and how the proposed project or management action maintains the existing condition or moves it within the range of natural variability. Management actions that do not maintain the existing condition or lead to improved conditions in the long term would not “meet” the intent of the Aquatic Conservation Strategy and thus, should not be implemented.</p>	<p>This section describes the objectives that are intended to be met through the four components of the Aquatic Conservation Strategy – Riparian Reserves, key watersheds, watershed analysis, and watershed restoration.¹ The Aquatic Conservation Strategy objectives apply only at fifth-field watershed and larger scales. Furthermore, achieving the Aquatic Conservation Strategy objectives at these large scales will take decades or longer, and the effectiveness of the Strategy can only be assessed over that amount of time.</p> <p>Application of the standards and guidelines in the Northwest Forest Plan, including those relating to the Aquatic Conservation Strategy, significantly limits the potential adverse effects that may result from the design and implementation of individual projects. As a result, an individual project (or individual management activity) would rarely, if ever, have a sufficient scope and duration to preclude or achieve any of the Aquatic Conservation Strategy objectives at fifth-field watershed and larger scales. Decision makers are not able or required to assess the contribution of a site-specific project to achieving Aquatic Conservation Strategy objectives. The Aquatic Conservation Strategy objectives are not to be interpreted as standards and guidelines applicable to individual projects.</p>

Northwest Forest Plan 1994 Record of Decision, Attachment A, Page B-10, continued	
No Action (Existing)	The Decision
	<p>Several of the Riparian Reserve standards and guidelines (pages C-31 - C-38 of the 1994 ROD) include references to “meet,” “not adversely affect,” “not retard or prevent attainment of” or otherwise achieve Aquatic Conservation Strategy objectives. In all of these standards and guidelines, the Aquatic Conservation Strategy objectives apply only at fifth-field watershed and larger scales, are achieved only over a period of decades or longer, and do not provide additional direction constraining the short-term or long-term effects of individual projects. A project such as culvert replacement or fire-preventing stand thinning may have short-term adverse effects but may not have any long-term adverse effects that would retard or prevent attainment of ACS objectives, or may even have long-term beneficial effects. Monitoring results will help managers evaluate over time the progress being made toward achievement of Aquatic Conservation Strategy objectives at the fifth-field watershed and larger scales.</p> <p>The record for a project within a Riparian Reserve must: (1) describe the existing condition, including the important physical and biological components of the fifth-field watershed(s) in which the project area lies; (2) describe the effect of the project on the existing condition; and (3) demonstrate that in designing and assessing the project the decision maker considered and used, as appropriate, any relevant information from applicable watershed analysis. The record will address these items at a level of detail in proportion to the project. The project is</p>

Northwest Forest Plan 1994 Record of Decision, Attachment A, Page B-10, continued	
No Action (Existing)	The Decision
	<p>consistent with Riparian Reserve standards and guidelines on pages C-31 - C-38 of this attachment that include direction to “meet,” “not adversely affect,” “not retard or prevent attainment of” or otherwise achieve ACS objectives, if the decision maker determines from the record that the project is designed to contribute to maintaining or restoring the fifth-field watershed over the long term, even if <u>short-term effects may be adverse</u>.</p> <p>¹The Federal Guide for Watershed Analysis (1995) discusses issues of scale and explains why the fifth-field watershed scale “satisfies many needs and offers a consistent format for reporting results of an analysis.” The Federal Guide states that analysis at the watershed scale “provides the context for management through the description and understanding of specific ecosystem conditions and capabilities.” Watershed analysis requirements are described in Section B. Also, Federal agencies may not be able to attain objectives within watersheds with relatively low proportions of Federal lands (see Northwest Forest Plan FSEIS p. 3&4-82).</p>

Northwest Forest Plan 1994 Record of Decision, Attachment A, Page C-1	
No Action (Existing)	The Decision
Although the direction in all sections of this document constitutes standards and guidelines, standards and guidelines specific to particular land allocation categories, or relative to specific types of management activities, are included (or referenced) in this section, Section C, of these standards and guidelines.	The standards and guidelines for specific land allocation categories and specific types of management activities are set forth in this section (Section C) and Section D of these standards and guidelines.

Northwest Forest Plan 1994 Record of Decision, Attachment A, Page C-31	
No Action (Existing)	The Decision
As a general rule, standards and guidelines for Riparian Reserves prohibit or regulate activities in Riparian Reserves that retard or prevent attainment of the Aquatic Conservation Strategy objectives. Watershed analysis and appropriate NEPA compliance is required to change Riparian Reserve boundaries in all watersheds.	<p>As a general rule, standards and guidelines for Riparian Reserves prohibit or regulate activities in Riparian Reserves. Watershed analysis and appropriate NEPA compliance is required to change Riparian Reserve boundaries in all watersheds.</p> <p>The record for a project within a Riparian Reserve must: (1) describe the existing condition, including the important physical and biological components of the fifth-field watershed(s) in which the project area lies; (2) describe the effect of the project on the existing condition; and (3) demonstrate that in designing and assessing the project the decision maker considered and used, as appropriate, any relevant information from applicable watershed analysis. The record will address these items at a level of detail in proportion to the project. The project is consistent with Riparian Reserve standards and guidelines on pages C-31 - C-38 of this attachment that include direction to “meet,” “not adversely affect,” “not retard or prevent attainment of” or otherwise achieve ACS objectives, if the decision maker determines from the record that the project is designed to contribute to maintaining or restoring the fifth-field watershed over the long term, even if short-term effects may be adverse.</p>

Reasons for the Decision

The specific wording we adopt in this decision differs from the language considered in the FSEIS. We determined that the alternatives in the FSEIS did not provide sufficient clarity to fully achieve the intended purposes of this decision. We find that the effects of this decision are within the range of effects predicted for the action alternatives analyzed in the FSEIS. These effects are also within the range of predicted effects for the Northwest Forest Plan.

The 1994 ROD uses the term “standards and guidelines” in an ambiguous and confusing manner. Our decision removes the ambiguous and confusing language and provides new provisions with clear meaning. In the 1994 ROD, the Secretaries made a distinction between “Standards and Guidelines” as overall management direction, and “standards and guidelines” which are to be applied to projects within specific land allocations. For example, on page A-6 the 1994 ROD states:

Designated areas, matrix, and Key Watersheds all have specific management direction regarding how those lands are to be managed, including actions that are prohibited and descriptions of the conditions that should occur there.

This management direction is known as “standards and guidelines” – the rules and limits governing actions, and the principles specifying the environmental conditions or levels to be achieved and maintained. Although the direction in all sections of this document constitutes standards and guidelines, standards and guidelines specific to particular land allocation categories, or relative to specific types of management activities, are included in Section C of these standards and guidelines.

The use of the term “standards and guidelines” in the 1994 ROD to mean two different things has been confusing to agency managers and the public. One result of that confusion has been a misinterpretation that the ACS objectives are standards and guidelines that must be applied to projects. This is not the case. We are making several changes to the 1994 ROD to clarify the use of the term “standards and guidelines.”

We are deleting the first paragraph on page i of Attachment A of the 1994 ROD because it contains a confusing reference to standards and guidelines. The rest of the content on that page is self-explanatory without the deleted paragraph. The deleted paragraph only serves to create uncertainty as to which parts of the 1994 ROD are standards and guidelines.

Similarly, we are making changes on page A-6 of the 1994 ROD to clarify that the standards and guidelines that apply to project management within the land allocations are those in sections C and D of Attachment A of the 1994 ROD. Likewise, we have chosen to delete the first paragraph of Section C for the same reasons we deleted the first paragraph on page i and changed page A-6.

Page B-10 includes language that has been incorrectly interpreted to mean that decision makers must demonstrate that each project is consistent at every geographic and temporal scale with all of the ACS objectives. However, these objectives were never intended to be attained at a site-specific (project) scale; rather, they were intended to be attained at the fifth-field⁶ watershed scale and larger, over the long term. This decision changes the wording on page B-10 to clarify its intent.

The changes adopted in this decision also emphasize that some short-term degradation may permissibly occur as a result of activities in aquatic ecosystems, as the framers of the ACS expected.

This decision specifies the procedures to follow in order to make a finding of project consistency with Riparian Reserve standards and guidelines that refer to “meet,” “not adversely affect,” “not retard or prevent attainment of,” or otherwise achieve attainment of these standards and guidelines. These procedures are necessary because an individual project cannot by itself meet ACS objectives. The requirement in this decision to design projects to contribute to maintaining or restoring the fifth-field watershed over the long term provides a functional methodology to link project design with attainment of ACS objectives. We are confident that the procedures for determining project consistency with the Riparian Reserve standards and guidelines we specify here will move us toward attainment of ACS objectives.

⁶ The fifth-field watershed was selected as the most useful scale for analysis of attainment of ACS objectives, as acknowledged in the 1995 Federal Guide for watershed analysis. It is the first subdivision of a sub-basin (ranging in size from 20,000 to 100,000 acres) and considered the most appropriate to “provide the context for management through description and understanding of specific ecosystem conditions and capabilities” (p. 7) and “satisf[y] many needs and offer a consistent format for reporting results of an analysis” (p. 8).

Agency managers must carefully analyze both the short-term and long-term impacts (and cumulative impacts) of a project in determining that the project design will contribute to maintaining or restoring the fifth-field watershed over the long term. This analysis should occur as part of the NEPA documentation for the project. If, after assessing the short-term, long-term, and cumulative impacts of the project, the decision maker concludes that the project is designed to contribute to maintaining or restoring the fifth-field watershed over the long-term, the project would be consistent with the Riparian Reserve standards and guidelines that refer to “meet,” “not adversely affect,” “not retard or prevent attainment of,” or otherwise achieve attainment of the ACS objectives.

Our decision will increase the ability of the Forest Service and BLM to successfully plan and implement projects that follow Northwest Forest Plan principles and achieve all of the goals of the Northwest Forest Plan, while retaining the original intent of the ACS. The decision will permit the agencies to achieve the ecological and economic goals of the Northwest Forest Plan, and emphasizes the original intent of the ACS to “maintain existing conditions or implement actions to restore conditions at the fifth-field watershed scale, over the long term.”

Why None of the Alternatives from the FSEIS Were Selected

No Action

Confusion related to the existing language on page B-10 and elsewhere of the 1994 ROD has hindered federal land managers’ ability to plan and implement projects needed to achieve Northwest Forest Plan goals. Current language has been incorrectly interpreted by some readers to require a “finding of consistency” with ACS objectives for every project (see FSEIS Chapter 1), a linkage that implies an erroneous and overly simplistic relationship between projects and attainment of ACS objectives.

The No Action Alternative would not increase agency success in planning and implementing projects because it would not clarify the problematic language on page B-10 and elsewhere. Projects would continue to be challenged because they “do not maintain the existing condition” at all spatial and temporal scales. At least six lawsuits have been filed that allege that proposed projects do not follow the ACS because they do not maintain the existing riparian and aquatic condition at every scale; and thus, violate requirements that projects comply with Resource Management Plans under the Federal Land and Policy Management Act (FLPMA) and the National Forest Management Act (NFMA).⁷

Under No Action, these incorrect interpretations of ACS language could have the potential to stop or delay a project with any short-term adverse impact. In the short

⁷ BARK, et al. v. Gary Larsen et al., U.S. District Court of Oregon, Civil No. 02-904-HU, filed July 2002; Headwaters and ONRC Fund v. United States Forest Service, U.S. District Court of Oregon, Civil No. 02-1519-JO, filed November 2002; Environmental Protection Information Center v. United States Forest Service, No. CIVS 03-0938 GEB KJM (E.D. Cal.), filed May 6, 2003; Klamath-Siskiyou Wildlands Center v. United States Forest Service, No. CIVS 03-1334 FCD DAD (E.D. Cal.), filed June 23, 2003; League of Wilderness Defenders and Blue Mountains Biodiversity Project, and Cascadia Wildlands Project v. U.S. Forest Service, U.S. District Court of Oregon, Civil No. 03-1357-PA (filed October 3, 2003); and Klamath-Siskiyou Wildlands Center v. BLM, U.S. District Court of Oregon, Civil No. 03-3006-CO, filed January 2003. In this last case, Magistrate Cooney recently filed Findings and Recommendations that would reject the interpretation of the ACS by the Plaintiff. This recommendation has not yet been adopted by the District Court.

term, delaying or avoiding projects could have some positive benefits on the physical and biological environment, since the risk of short-term adverse effects from the projects would be reduced or eliminated. However, reductions and delays in project implementation could lead to increased risk of ongoing and catastrophic adverse effects from road failure and landslides. Appendix V-J of the 1993 Forest Ecosystem Management Assessment Team report stated that processes that have degraded watersheds would not be reversed without a comprehensive restoration program. The watershed restoration program is sometimes necessarily integrated with the vegetation management program (see FSEIS page 28 for more information on integration of vegetation management and restoration projects).

Fuels management projects, especially those that include an element of commercial timber harvest, could be stopped or delayed due to ACS misinterpretations. Implementation of these projects is needed to achieve goals of the National Fire Plan. If the ACS interpretation results in delayed implementation of fuels reduction projects, the risk of adverse effects of wildland fire could increase. See pages 52-53 of the FSEIS for more discussion of this topic. The Northwest Forest Plan is intended to provide for both economic benefits as well as environmental benefits. In the 1994 ROD for the Northwest Forest Plan, timber harvest within matrix lands and other specified areas is an authorized activity as part of timber management outside the reserves. The 1994 ROD and associated FSEIS clearly identified that harvest levels associated with Northwest Forest Plan Alternative 9 (the 1994 selected alternative) were compatible with attainment of ACS objectives.

Proposed Action

The Proposed Action was not selected because it would not have provided the same level of clarity found in the language selected in this decision. The Proposed Action was circulated for public review in the Draft SEIS and was also an alternative in the FSEIS. The numerous comments we received on this alternative indicate that its intent and meaning were not clear. Appendix C of the FSEIS describes in detail the comments we received on the Draft SEIS.

The Proposed Action does not clarify the issue of the time frame needed to attain ACS objectives. It clarifies that progress towards attainment of ACS objectives is appropriately measured at the fifth-field watershed and larger scales, but is not explicit with regard to the time frame over which attainment should be measured. Also, the decision language is clearer in its description of the relevance of short-term and long-term project effects in implementing the components of the ACS.

The Proposed Action also does not provide sufficient direction to understand how to comply with those Riparian Reserve standards and guidelines that reference ACS objectives.

Alternative A

Alternative A was not selected because it would not have provided the same level of clarity as the language adopted in this decision. Alternative A would retain the confusing language about which portions of Attachment A of the 1994 ROD are standards and guidelines associated with land allocations. Further, it is not as clear as the decision language in its discussion of the time frame that is required to attain ACS objectives.

Alternative A does not clearly explain the relevance of short-term versus long-term effects in understanding how to implement the components of the ACS. In addition, Alternative A would have required a description of how a project in a Riparian Reserve “maintains the existing condition or restores it toward [the] range of natural variability.” This requirement would be difficult or impossible to meet because range of natural variability cannot meaningfully be described at the site scale, and most projects involve only a small portion of a watershed.

Comments on the FSEIS

No public comments were received on the FSEIS.

Monitoring Plan

This decision does not approve any specific monitoring plans. The Aquatic Riparian Effectiveness Monitoring Plan (AREMP) was approved in March 2001 and published in 2003 (Reeves et al. 2003). AREMP will assess progress toward attainment of ACS objectives across the Northwest Forest Plan area. Monitoring also occurs as a part of projects and larger-scale plans. Over time, monitoring will provide feedback about whether watershed conditions are improving.

Findings of Compliance With Laws

Civil Rights and Environmental Justice

No disparate or adverse effects are identified to groups of people identified in Civil Rights statutes or Executive Order 12898 (Environmental Justice) from Alternative A (as Modified). This finding is due largely to the administrative nature of the proposed change (i.e. a change in wording of an existing ROD to clarify requirements). A Civil Rights Impact Analysis was prepared to comply with all applicable civil rights statutes, including Title VI of the Civil Rights Act of 1964.

Effects on Critical Elements

Both agencies require disclosure of effects on several critical elements of the human environment. These include air quality, Areas of Critical Environmental Concern, cultural resources, prime and unique farm and forest lands, floodplains, Native American religious concerns, threatened and endangered species, hazardous materials and solid waste, surface and ground water quality, wetlands and riparian zones, wild and scenic rivers, noxious weeds, and environmental justice. The BLM requires that these elements be specifically addressed in environmental impact statements (BLM Handbook H-1790-1).

The decision does not have the potential to affect any of these elements beyond the levels disclosed previously in the Northwest Forest Plan FSEIS.

National Environmental Policy Act (NEPA)

The Council on Environmental Quality (CEQ) NEPA implementing regulations (40 CFR 1500-1508) apply to both the BLM and Forest Service. These regulations were followed for this decision. Appendix C in the FSEIS addresses public comments received on the Draft SEIS. The SEIS builds on information already compiled and displayed in the 1994 Northwest Forest Plan FSEIS. The ACS FSEIS and referenced documents compile and consider relevant new information.

The range of alternatives considered is adequate for this decision. Since this decision is only a limited change in wording intended to improve agency success in meeting the intent of an existing plan, the scope of the alternatives is necessarily limited. The ACS FSEIS discusses alternatives considered but eliminated from detailed study. The agencies developed Alternative A to respond to issues of concern to the public.

We find that the language changes we are adopting will have environmental effects within the range of predicted for the action alternatives in the FSEIS. We also find that the FSEIS provided adequate cumulative effects analysis to support this decision. See Chapter 3&4 for a discussion of cumulative effects, especially page 51.

National Forest Management Act (NFMA)

This decision is a non-significant amendment to 19 National Forest LRMPs. The amendment was developed consistent with procedural requirements for National Forests. This decision complies with planning regulations under the National Forest Management Act (NFMA), promulgated in 1982 (36 CFR 219).

The FSEIS on page 4 states in a footnote that this is a “significant amendment.” This was a typographical error; the text should have said “non-significant amendment.” The Forest Service Manual (FSM 1922.51 and .52) provides specific direction for determining the significance of a plan amendment. Examples of changes that are indicative of circumstances that may cause a significant change to a forest plan include:

- Changes that would significantly alter the long-term relationship between levels of multiple-use good and services originally projected (36 CFR 219.10(e)); or
- Changes that may have an important effect on the entire forest plan or affect land and resources throughout a large portion of the planning area during the planning period.

The changes resulting from this decision are not significant. No changes are projected in levels of goods and services beyond that expected in the 1994 ROD. This wording change will clarify incorrect interpretations and lead to agency success in planning and implementing the full range of projects that were anticipated in the 1994 FSEIS for the Northwest Forest Plan. The sole intent of this decision is to improve implementation of the Northwest Forest Plan.

We conclude that the changes effected by this decision are not significant, and that the requirements for amending Forest Service Land and Resource Management Plans have been met.

A Biological Evaluation was prepared to consider whether this Forest Plan amendment might affect the viability of any Forest Service sensitive species. The Biological Evaluation supports a finding of No Effect.

Federal Land Policy and Management Act (FLPMA)

BLM’s land use planning authority is provided in FLPMA, 43 U.S.C. Sec. 1712. Regulations to implement that authority are 43 CFR Subpart 1610. The most pertinent section to the present decision is the regulation 43 CFR 1610.5-5 concerning amendments to BLM RMPs, which may be initiated by the need to consider monitoring and evaluation findings or new data, among other reasons. In the event a decision is made to prepare an environmental impact statement, as is the case here, the amending process follows the same procedure required for the preparation and approval of the RMPs, but consideration shall be limited to only the portion of the plan being amended. These procedures have all been followed in preparing this decision to amend the existing RMPs of the BLM. The FSEIS Governor’s Consistency Review for Oregon and California (no Washington BLM lands are included in this decision) was initiated on October 29, 2003. No responses were received within 60 days, thus the review requirement has been satisfied.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act (ESA) requires that Federal agencies consult with the U.S. Fish and Wildlife Service and NOAA Fisheries, as appropriate, to ensure that their actions are not likely to: (1) jeopardize the continued existence of species listed as threatened or endangered under the ESA; or, (2) destroy or adversely modify designated or proposed critical habitat. The BLM and Forest Service re-initiated formal consultation with NOAA Fisheries and the U.S. Fish and Wildlife Service on the continued implementation of the RMPs as amended by this decision. NOAA Fisheries and the U.S. Fish and Wildlife Service concluded in their biological opinions that implementation of the RMPs as amended by this decision is not likely to: (1) jeopardize the continued existence of threatened or endangered species assessed in the Biological Assessment; or, (2) destroy or adversely modify designated or proposed critical habitat. The BLM and Forest Service determined that there would be no effect to other ESA-listed species in a Biological Evaluation.

Clean Water Act

This decision is expected to maintain and improve water quality. We base this finding on the extensive water quality protection provided by the comprehensive, watershed-based approach.

Protection of Tribal Treaty Rights and Trust Resources

American Indian treaty rights and trust resources will be protected under the decision. This decision influences management of the Coquille Forest. These lands are part of the Coquille Indian Reservation, and are held in trust by the United States. An Act of Congress in 1996 transferred ownership of about 5,400 acres of federal land within the Northwest Forest Plan area to the Coquille Indian Tribe. The Act required that the Coquille Forest be managed subject to the same direction as adjacent or nearby federal lands. The decision has effects on tribal treaty rights and trust resources similar to the Northwest Forest Plan.

Review by the Regional Interagency Executive Committee (RIEC)

The Northwest Forest Plan Record of Decision at page E-18 requires the preparation of amendments to the Northwest Forest Plan be coordinated with, and reviewed by, the RIEC. The purpose of the review is to, "assure consistency with the objectives of these [Northwest Forest Plan] standards and guidelines." The record shows the RIEC has been involved in this analysis and decision. They concurred with the Notice of Intent and the Preferred Alternative in both the Draft SEIS and FSEIS. Some of the agencies represented on the RIEC provided specific comments. A subcommittee of agency executives authorized by the RIEC reviewed this decision.

Valid Existing Rights

This decision does not repeal valid existing rights on public lands. Valid existing rights are those rights or claims to rights that take precedence over the actions contained in this plan. Valid existing rights may be held by other Federal, State or local government agencies or by private individuals or companies. Valid existing

rights may pertain to mining claims, mineral or energy easements, rights-of-way, reciprocal rights-of-way, leases, agreements, permits, and water rights.

Environmentally Preferable Alternative

CEQ's regulations require that the Record of Decision specify "the alternative or alternatives which were considered to be environmentally preferable" (40 CFR 1505.2(b)). CEQ's "Forty Questions" document (46 Federal Register, 18026, March 23, 1981) clarifies that, "[t]he environmentally preferable alternative is the alternative that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative that best protects, preserves and enhances historic, cultural and natural resources." The environmentally preferable alternative must be one of the alternatives analyzed in the FSEIS.

Pursuant to the regulations, we identify the Proposed Action as the environmentally preferable alternative because it will increase agency success in planning and implementing projects that follow the Northwest Forest Plan principles.

Administrative Review or Appeal

A decision by the Under Secretary of Agriculture is not subject to administrative appeal under the Forest Service regulations. A decision by the Assistant Secretary of the Interior is not subject to administrative appeal under BLM regulations. Therefore, this decision is the final agency action for the amendment of the 1994 ROD and the applicable planning documents.

This decision does not constitute the final agency action for any project or activity. Before a decision document for a project or activity, such as a timber sale or restoration project, is authorized, applicable procedures must be complied with, including applicable analysis and/or review as provided under NEPA.

Effective Date of the Decision

This decision shall take effect immediately upon signing.

For More Information

For more information, contact:

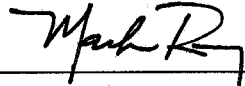
Lisa Freedman
Director of Resource Planning and
Monitoring
USDA Forest Service
Pacific Northwest Region
P.O. Box 3623
Portland, OR 97208-3623

Mike Haske
Branch Chief for Natural Resources
Oregon/Washington State Office
P.O. Box 2955
Portland, OR 97208-2955

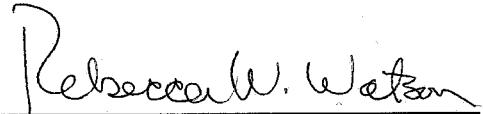
RECORD OF DECISION

Signatures and Dates

By signing this Record of Decision together, we exercise our respective authorities over only those portions relevant to our authority.



Mark Rey, Under Secretary for
Natural Resources and the Environment



Rebecca Watson, Assistant Secretary
for Land and Minerals Management

U.S. Department of Agriculture

Dated:

MAR 22 2004

U.S. Department of the Interior

Dated:

MAR 22 2004